

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HIGHMARK INC., *et al.*,)
Plaintiffs,)
v.) Case No. 20-1686 C
THE UNITED STATES,)
Defendant.)
)
)
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)

STIPULATION TO ENTER PARTIAL FINAL JUDGMENT

To partially resolve the Complaint of Plaintiffs, and to permit the entry of partial final judgment on that Complaint, Plaintiffs and the United States (collectively, the “Parties”) stipulate as follows:

1. Section 1402 of the Patient Protection and Affordable Care Act (ACA) established the cost-sharing reduction (CSR) program to lower the cost of health coverage offered for eligible insureds. 42 U.S.C. § 18071.

2. On August 14, 2020, the U.S. Court of Appeals for the Federal Circuit determined that “the government violated its obligation to make cost-sharing reduction payments [to insurers] under section 1402; ‘that the cost-sharing-reduction reimbursement provision imposes an unambiguous obligation on the government to pay money[;] and that the obligation is enforceable through a damages action in the [Claims Court] under the Tucker Act.’” *Cmty.*

Health Choice, Inc. v. United States, 970 F.3d 1364, 1371 (Fed. Cir. 2020) (quoting *Sanford Health Plan v. United States*, 969 F.3d 1370, 1373 (Fed. Cir. 2020)). The Federal Circuit further determined that there was “no basis for a 2017 damages offset.” *Id.* at 1372. The Supreme Court denied further review of these rulings.

3. On November 25, 2020, Plaintiffs filed the Complaint in this Court (ECF No. 1) seeking damages for unpaid CSR payments through December 31, 2019. The Complaint asserts three counts, the first seeking CSR payments through December 31, 2017, the second seeking CSR payments through December 31, 2018, and the third seeking CSR payments through December 31, 2019.

4. The Parties agree that the Federal Circuit's rulings in *Community Health Choice* and *Sanford* entitle Plaintiffs to payment under section 1402 of the ACA in the amount of \$1,182,810.97 (the Stipulated Amount) for unpaid CSR payments through December 31, 2017.

5. Accordingly, the Parties jointly request that the Court enter partial final judgment in favor of Plaintiffs in the amount of \$1,182,810.97 on Count I of the Complaint as it relates to CSR payments through December 31, 2017, with each party to bear its own costs, attorney fees, and expenses.

6. The Parties further request that the Court dismiss Count I of the Complaint with prejudice.

7. Upon entry of final judgment in the Stipulated Amount, Plaintiffs Highmark Inc. f/k/a Highmark Health Services (HIOS no. 33709); HMO of Northeastern Pennsylvania, Inc. d/b/a First Priority Health (HIOS no. 83731); HM Health Insurance Company d/b/a Highmark Health Insurance Company (HIOS no. 70194); Highmark BCBS Inc. (HIOS no. 76168); Highmark West Virginia Inc. (HIOS no. 31274); and Highmark Choice Company (HIOS no. 38949) and any and all of its affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the United States, its agencies,

instrumentalities, officers, agents, employees, and servants, relating to unpaid CSR payments owed Plaintiffs by the Government through December 31, 2017.

Dated: January __, 2022

/s/ Lawrence S. Sher

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